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5                   UNITED STATES DISTRICT COURT  
6                   EASTERN DISTRICT OF WASHINGTON

7                   KATIE J. BARNARD, individually  
8                   and on behalf of N.B. and M.S., minor  
9                   children,

10                  Plaintiff,

11                  v.  
12                  MINDY WATSON, in her individual  
13                  and official capacities, et al.,

14                  Defendants.

15                  NO: 2:14-CV-0024-TOR

16                  ORDER GRANTING DEFENDANTS'  
17                  MOTION TO DISMISS

18                  BEFORE THE COURT is Defendants' Motion to Dismiss (ECF No. 2).

19                  This matter was submitted for consideration without oral argument. The Court has  
20                  reviewed the briefing and the record and files herein, and is fully informed.

17                  BACKGROUND

18                  Plaintiff Katie Bernard ("Plaintiff") has sued six caseworkers employed by  
19                  the Child Welfare Services division of the Washington State Department of Social  
20                  and Health Services ("DSHS") for various causes of action arising from the

1 placement of her minor children, N.B. and M.S., in foster care. Defendants move  
2 to dismiss the complaint for failure to effectuate proper service and for failure to  
3 file a notice of tort claim form with the Office of Risk Management as required by  
4 RCW 4.92.100.

5 **DISCUSSION**

6 **A. Service of Process**

7 Defendants move to dismiss the complaint due to improper service of  
8 process.<sup>1</sup> In opposing the motion, Plaintiff indicates that she mailed a copy of the  
9 summons and complaint to each Defendant via certified mail, and that an unnamed  
10 DSHS employee signed for the letters. ECF No. 11 at 2. As Defendants correctly  
11 note, this does not constitute proper service. Pursuant to RCW 4.28.080(15), a  
12 plaintiff must accomplish service by delivering a copy of the summons “to the  
13 defendant personally, or by leaving a copy of the summons at the house of his or  
14 her usual abode with some person of suitable age and discretion then resident  
15 therein.” The phrase “to the defendant personally” means that the summons must

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16 <sup>1</sup> Defendants did not waive this challenge by removing the case to this Court.

17 *Wabash W. Ry. v. Brow*, 164 U.S. 271, 279 (1896) (holding that the removal of a  
18 case from state court to federal court constitutes a special appearance and does not  
19 waive the defendant’s right to contest service of process).

1 be hand-delivered to the defendant. *Weiss v. Glemp*, 127 Wash.2d 726, 731  
2 (1995). Service must be made “by the sheriff of the county wherein the service is  
3 made, or by his deputy, or by any person over 18 years of age who is competent to  
4 be a witness in the action, other than a party.” Wash. Sup. Ct. Civ. R. 4(c); *accord*  
5 Fed. R. Civ. P. 4(c) (permitting service by “[a]ny person who is at least 18 years  
6 old and not a party” to the action).

7 Although RCW 4.28.080(16) provides for substitute service by mail, this  
8 method of service is only permissible “where the [defendant] cannot with  
9 reasonable diligence be served” personally. RCW 4.28.080(16); *see also Pascua v.*  
10 *Heil*, 126 Wash. App. 520, 526 (2005) (“Substitute service by mail . . . is  
11 permissible when the plaintiff sets forth the following facts: (1) that the defendant  
12 could not be found in Washington after a diligent search, (2) that the defendant was  
13 a resident of Washington, and (3) that the defendant had either left the state or  
14 concealed himself within it, with intent to defraud creditors or avoid service of  
15 process.”). Since Plaintiff has neither effectuated proper personal service nor  
16 satisfied the prerequisites for substitute service by mail, the case must be dismissed  
17 without prejudice.

18 To the extent that Plaintiff wishes to pursue claims against DSHS, she must  
19 serve a copy of the summons and complaint on the Attorney General “or by  
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1 leaving the summons and complaint in the office of the attorney general with an  
2 assistant attorney general.” RCW 4.92.020.

3 **B. Notice of Claim Statute**

4 In view of the foregoing ruling, the Court need not address whether Plaintiff  
5 properly complied with RCW 4.92.100, the notice of claims statute.

6 **IT IS HEREBY ORDERED:**

7 Defendants’ Motion to Dismiss (ECF No. 2) is **GRANTED**. Plaintiff’s  
8 Complaint is hereby **DISMISSED** without prejudice.

9 The District Court Executive is hereby directed to enter this Order, provide  
10 copies to counsel and Plaintiff at her address of record, enter **JUDGMENT** for  
11 Defendants, and **CLOSE** the file.

12 **DATED** June 9, 2014.



13 A handwritten signature in blue ink that reads "Thomas O. Rice".  
14 THOMAS O. RICE  
United States District Judge  
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